## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:10cv325

MICHAEL RODRIGUEZ,	
Plaintiff,	
Vs.	ORDER
NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, INC.; and ACCESS MARKETING & COMMUNICATIONS, LLC	
Defendants.	

THIS MATTER is before the court on NASCAR's Motion for Summary Judgment (#76) and Access Marketing & Communications, LLC's Motion for Summary Judgment (#78). Having considered the briefs in support of such motion, plaintiff's response, and defendants' replies, and having heard oral arguments on April 18, 2012, and finding that genuine issues of material fact remain for resolution by a jury, the court enters the following Order.

## **ORDER**

IT IS, THEREFORE, ORDERED that NASCAR's Motion for Summary Judgment (#76) and Access Marketing & Communications, LLC's Motion for Summary Judgment (#78) are **DENIED**, and this matter is set as the first matter for trial beginning on June 4, 2012, at 9:30 a.m. A checklist is attached as to pretrial filings.

Signed: April 20, 2012

Max O. Cogburn Jr.
United States District Judge

## JURY TRIAL CHECKLIST FOR PRETRIAL CONFERENCE

		Plaintiff	Defendant
a.	Trial briefs		
b.	Exhibit Lists		
c.	Witness Lists		<del></del>
d.	Verdict Sheets		<del></del>
e.	JURY INSTRUCTIONS:		
	POTENTIAL I	PROBLEMS CH	<u>IECKLIST</u>
a.	Witness Issues		
b.	Exhibit Issues		
c.	Personal Issues		<del></del>
d.	Exclusion of Witnesses		
e.	Unresolved issues of law		<del></del>
f.	Familiarity with Elmo		<del></del>
g	Exhibit Notebooks		
	FEDERAL	JURY TRIAL I	SSUES
a.	Time Estimate for Plaintiff's	Case in Chief	
a. b.	Time Estimate for Defendant		<del></del>
c.	Qualification of Experts or D		<del></del>
d.	In accordance with the Feder	al Rules we seat	an 8 person jury, with all eight
u.			ould be dropped and the case
	•	•	istinction as to alternates in civil
	cases.	o. We make no u	istinction as to afternates in civil
e.		s three naremnt	ory challenges, unless the court
<b>∪</b> .	in rederal court, each side get	s turee herempt	ory chancinges, unices the court

- e. In federal court, each side gets **three peremptory challenges**, unless the court finds that there are multiple parties on a side that have conflicting interests. 28 U.S.C. § 1870.
- f. The jury is not passed by a party until they are satisfied with each member. Once they pass on a juror, they cannot later challenge that juror.
- g. If they settle the case in a manner that results in the court paying fees and travel without a jury being seated, the court will impose those costs on the parties for the entire panel. Settlement deadline is noon Friday, the week before the jury is picked.
- h. Picking a jury in federal court is governed by Rule 47(a), Federal Rules of Civil Procedure, and federal judges play a more active role in jury questioning. The court does not allow the "town meeting" or "matrix" approach to picking juries, and each side will be given a limited amount of time to question potential jurors. (Typically 30 minutes)
- i. After the jury is seated and sworn, the court will give an opening charge briefly describing the case and the roles of the various parties in the courtroom.
- j. After the opening charge, the jury will be with plaintiff for an opening statement (typically 30 minutes). Defendant will also be given such an

- opportunity, but may waive such right and present such opening at the beginning of defendant's case. (typically 30 minutes)
- k. The court will have a charging conference after all the evidence has been submitted and before counsel present their closing statements.
- 1. Closing statements are typically 45 minutes per side total.
- m. Have the parties fully mediated this case and is there any possibility of settlement before the court begins investing time in trial preparation.

## TRIAL TO COMMENCE AT 9:30 a.m. on the First Day of the Term and at 9:00a.m. each other day.